

of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§93.133 Enforceability of design concept and scope and project-level mitigation and control measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §§93.118 through 93.120 and §§93.122-93.124 or

used in the project-level hot-spot analysis required by §§93.116 and 93.121.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in §51.396 of this chapter shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of §§93.116, 93.118, and 93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under §93.105. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of §§93.118 and 93.119 and that the project still satisfies the requirements of §93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

§93.134 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see §93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

TABLE 2.—EXEMPT PROJECTS

Safety

Railroad/highway crossing.
 Hazard elimination program.
 Safer non-Federal-aid system roads.
 Shoulder improvements.
 Increasing sight distance.
 Safety improvement program.
 Traffic control devices and operating assistance other than signalization projects.
 Railroad/highway crossing warning devices.
 Guardrails, median barriers, crash cushions.
 Pavement resurfacing and/or rehabilitation.
 Pavement marking demonstration.
 Emergency relief (23 U.S.C. 125).
 Fencing.
 Skid treatments.
 Safety roadside rest areas.
 Adding medians.
 Truck climbing lanes outside the urbanized area.
 Lighting improvements.
 Widening narrow pavements or reconstructing bridges (no additional travel lanes).
 Emergency truck pullovers.

Mass Transit

Operating assistance to transit agencies.
 Purchase of support vehicles.
 Rehabilitation of transit vehicles¹.
 Purchase of office, shop, and operating equipment for existing facilities.
 Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
 Construction or renovation of power, signal, and communications systems.
 Construction of small passenger shelters and information kiosks.
 Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
 Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
 Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹.
 Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

Air Quality

Continuation of ride-sharing and van-pooling promotion activities at current levels.
 Bicycle and pedestrian facilities.

Other

Specific activities which do not involve or lead directly to construction, such as:
 Planning and technical studies.
 Grants for training and research programs.
 Planning activities conducted pursuant to titles 23 and 49 U.S.C.
 Federal-aid systems revisions.
 Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
 Noise attenuation.
 Advance land acquisitions (23 CFR part 712 or 23 CFR part 771).
 Acquisition of scenic easements.
 Plantings, landscaping, etc.
 Sign removal.
 Directional and informational signs.
 Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).

TABLE 2.—EXEMPT PROJECTS—Continued

Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

¹ In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§ 93.135 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

TABLE 3.—PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

D

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

§ 93.136 Special provisions for non-attainment areas which are not required to demonstrate reasonable further progress and attainment.

(a) *Application.* This section applies in the following areas:

- (1) Rural transport ozone nonattainment areas;
- (2) Marginal ozone areas;
- (3) Submarginal ozone areas;
- (4) Transitional ozone areas;
- (5) Incomplete data ozone areas;
- (6) Moderate CO areas with a design value of 12.7 ppm or less; and
- (7) Not classified CO areas.

(b) *Default conformity procedures.* The criteria and procedures in §§ 93.122 through 93.124 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in §§ 93.118 through 93.120, except as otherwise provided in paragraph (c) of this section.

(c) *Optional conformity procedures.* The State or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in §§ 93.118 through 93.120 apply in lieu of the procedures in §§ 93.122 through 93.124.

Subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

SOURCE: 58 FR 63253, Nov. 30, 1993, unless otherwise noted.

§ 93.150 Prohibition.

(a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart before the action is taken.

(c) Paragraph (b) of this section does not include Federal actions where:

- (1) A National Environmental Policy Act (NEPA) analysis was completed as